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5
6 United States District Court
7 Eastern District of Washington
Before the Hon. Salvador Mendoza, Jr.

8 United States of America,

9 Plaintiff,

10 v.

11 Monica Pesina,

12 Defendant.

No. 4:19-CR-06063-SMJ

Motion to Revoke Detention
Order

EVIDENTIARY HEARING
REQUESTED

13 January 9, 2020 at 10:00 AM
With oral argument

14 Pursuant to 18 U.S.C. § 3145(b) and LCrR 46, Defendant Monica
15 Pesina, through her counsel of record, moves for revocation of the
16 detention order issued by Magistrate Judge Mary Dimke on
17 November 22, 2019 (ECF No. 48). “If a person is ordered detained
18 by a magistrate judge ... the person may file, with the court having
19 original jurisdiction over the offense, a motion for revocation or

1 amendment of the order. The motion shall be determined
2 promptly." 18 U.S.C. § 3145(b).

3 **A. Requested Relief**

4 Defendant Pesina asks the Court to follow the recommendation
5 of the United States Probation Office and order Defendant Pesina
6 released pending trial on the standard and special conditions
7 identified by the United States Probation Office. ECF No. 46.

8 **B. Summary of Facts**

9 The Government charged Defendant Pesina with two counts of
10 possessing a controlled substance with intent to deliver on June 4,
11 2019. ECF No. 6. Records produced in discovery show that on that
12 date, Pasco Police Officer Parramore observed two vehicles stopped
13 at the intersection of Road 60 and West Court Street in Pasco,
14 Washington. The rear vehicle did not have a turn signal activated.
15 The lead vehicle merged onto West Court Street, and the rear
16 vehicle activated its turn signal, pulled forward to the stop sign,
17 and turned left. Officer Parramore initiated a traffic stop
18 purportedly because "the vehicle failed to signal continuously
19 during the last 100 feet traveled by the vehicle before turning." The
20 occupants of the vehicle were identified as Defendant Pesina, co-

1 defendant Carter, and a third party. Detective Corral responded
2 less than three minutes after the traffic stop was initiated.
3 Detective Carlisle responded with his K9 unit less than four
4 minutes after the traffic stop was initiated. Detective Carlisle
5 “applied [his] drug-detection K9 Ezra to the exterior of the vehicle.”
6 Ezra alerted to the presence of the odor of narcotics. *Id.* The vehicle
7 was seized, a state search warrant was obtained, and the vehicle
8 was searched. A search of a red backpack found in the vehicle’s
9 trunk revealed about 372 grams of purported methamphetamine,
10 about 55 grams of purported heroin, and \$26,950 cash.

11 **C. Legal Standard**

12 If there exists any combination of conditions that will reasonably
13 assure Defendant Pesina’s appearance as required and reasonably
14 assure the safety of other persons and the community, Defendant
15 Pesina must be released. 18 U.S.C. § 3142(c)(1). In making these
16 two separate determinations, the Court should consider the nature
17 and circumstances of the offense charged, the weight of the
18 evidence against Defendant Pesina, her history and characteristics,
19 and the nature and seriousness of the danger to any person or the
20 community posed by Defendant Pesina’s release. 18 U.S.C. §

1 3142(g). Because Count 1 carries a mandatory minimum of ten
2 years confinement, a rebuttable presumption arises that there is
3 no combination of conditions that will reasonably assure
4 Defendant Pesina's appearance as required and reasonably assure
5 the safety of the community. 18 U.S.C. § 3142(e)(3)(A).

6 “[T]he district court’s review of a magistrate’s detention order is
7 to be conducted without deference to the magistrate’s factual
8 findings.” *United States v. Koenig*, 912 F.2d 1190, 1192 (9th Cir.
9 1990). The district court “should review the evidence before the
10 magistrate and make its own *independent* determination...with no
11 deference.” *Id.* at 1193 (emphasis added). If “necessary or
12 desirable” the district court may “hold additional evidentiary
13 hearings” even if the only evidence that is presented was already
14 presented to the magistrate. *Id.*

15 **D. Discussion**

16 To rebut the presumption, Defendant Pesina only needs to
17 produce *some* evidence that she is not a flight risk and does not
18 pose a danger to the community. *United States v. Hir*, 517 F.3d
19 1081, 1086 (9th Cir. 2008) (“Although the presumption shifts a
20 burden of production to the defendant, the burden of persuasion

1 remains with the government.”). This burden of production is a
2 minimal obligation, only requiring Defendant to produce “some
3 credible evidence.” *United States v. Carbone*, 793 F.2d 559, 560
4 (3rd Cir. 1986).

5 Here, Defendant Pesina is not a flight risk because (1) she is a
6 U.S. citizen and has lived in Walla Walla or the Tri-Cities her entire
7 life, (2) she does not have a passport and has only travelled out of
8 state on rare occasions, (3) her two minor children reside in
9 Kennewick, Washington, (4) she does not have a history of failing
10 to appear for Court, (5) she did not flee the jurisdiction after being
11 detained following the June 2019 traffic stop, (6) she has no history
12 of violence, (7) she has no history of firearm violations, (8) her
13 release plan includes attending intensive outpatient substance
14 abuse treatment, (9) her release plan includes residing in a clean
15 and sober residential facility, (10) she has a valid driver’s license,
16 (11) she has an operational vehicle, and (12) her best friend is
17 supportive and has been clean and sober for three years. Defense
18 counsel is not alone in this determination—the most recent pretrial
19 services report also recommends release on conditions. ECF No. 46
20 at 2.

1 Furthermore, the Government itself waited five months to arrest
2 and charge Defendant Pesina, which contradicts its claim of her
3 dangerousness to the community or likelihood of flight. The
4 criminal complaint was signed on October 22, 2019. ECF No. 1.
5 The warrant for her arrest was issued on November 6, 2019 and
6 she was arrested the following day. ECF No. 21.

7 The Government may attempt to argue that Defendant Pesina
8 should be detained based on her alleged conduct between June
9 2019 and October 2019. Defendant Pesina would note that this
10 uncharged conduct should not be considered by the Court under
11 18 U.S.C. § 3142(g)(1), which specifically refers to the “offense
12 charged.”

13 Because Defendant Pesina met her minimal obligation to
14 produce some credible evidence, the burden of persuasion remains
15 with the Government to show “by a preponderance of the evidence
16 that the defendant poses a flight risk, and by clear and convincing
17 evidence that the defendant poses a danger to the community.”

18 *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991).

1 **E. Conclusion**

2 For these reasons, Defendant Pesina respectfully requests the
3 Court hold an evidentiary hearing and to release her on the
4 conditions identified in the most up-to-date pretrial services report.
5 ECF No. 46.

6

7 Dated: December 9, 2019

Respectfully Submitted,

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1 SERVICE CERTIFICATE

2 I certify that December 9, 2019, I electronically filed the foregoing
3 with the District Court Clerk using the CM/ECF System, which will
4 send notification of such filing to the following:

5
6 Stephanie Van Marter, Attorney for Plaintiff

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